AN ORDINANCE OF THE TOWN OF SILVERTON AMENDING CHAPTER 5 OF THE CODE OF THE TOWN OF SILVERTON REGARDING THE ADOPTION OF RULES GOVERNING THE ADMINISTRATION OF THE MUNICIPAL COURT.

WHEREAS, the Town of Silverton has previously adopted and codified rules governing the administration of the municipal court;

WHEREAS, there have been changes in the community and changes in the legal environment in which the municipal court must function; and

WHEREAS, the Town Board of Trustees finds that it is necessary and beneficial to the welfare of the citizens of the Town that Chapter 5, Municipal Court, of the Town Code be amended to comply with the needs of the community and the requirements of law;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON, COLORADO THAT:

Chapter 5, Municipal Court, of the Code of the Town of Silverton be amended to read in accordance with Exhibit I, attached hereto and by reference is made a part of this ordinance as though fully set forth herein.

ADOPTED AND ORDERED PUBLISHED this 10th day of May, 1999.

ATTEST:

Clàudia J. Moe

Town Clerk-Treasurer

TOWN OF SILVERTON

Farrance M. Kerwin

Mayor



# CHAPTER 5 MUNICIPAL COURT

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	As used in this article the following terms shall have the following meanings:	
	1) <u>Municipal Court</u> . The term "municipal court" shall mean the municipal court of the Town of Silverton.	
	<ol> <li>Municipal Judge. The term "municipal judge" shall mean the presiding judge of the municipal court of the Town of Silverton.</li> </ol>	
5-1-2	Municipal Court Created. A municipal court in and of the Town of Silverton is hereby created and established.	
5-1-3	Appropriations. The Board of Trustees shall from time to time budget and appropriate such amounts as it deems fit to carry out the operations of the municipal court.	
5-1-4	Municipal Judge, Appointment. The court shall preside over by a presiding Municipal Judge, appointed by the Board for a two (2) year term, or until a successor is appointed and duly qualified. The Municipal Judge shall perform no other duties during the hours that Court is in session except such as may be approved by the Board on motion or resolution. The Board may appoint additional judges from time to time as may be needed to transact the business of the court or to preside in the absence of the presiding judge. The presiding judge shall supervise and direct the court's operations. Any Municipal Judge may be removed by the Board for cause.	

- Qualification. The Board may, by ordinance or resolution duly considered and adopted, establish from time to time such qualifications for the office of Municipal Judge as it may deem fit and proper and consistent with the procurement of person of judicial temperament and ability.
- Oath and Bond. Before entering upon the duties of his office the Municipal Judge shall take and subscribe, before a judge of a court of record, and file with the Board an oath or affirmation that he will support the Constitution of the United States and the Constitution and Laws of the State of Colorado and the ordinances of the Town of Silverton and will faithfully perform the duties of his office. Said Municipal Judge shall be bonded by the Town in an amount deemed reasonable by the Board of Trustees, such bond to be conditioned on the faithful performance of the duties of the office of Municipal Judge, and for the faithful accounting for and payment of all monies coming into his hands by virtue of said office.
- 5-1-7 <u>Compensation</u>. The annual compensation of the Municipal Judge shall be set by the Board.
- 5-1-8 Presiding Judge's Powers. The presiding Municipal Judge shall have the authority to propose rules and regulations for conducting the business of the municipal court. Such rules and regulations shall be reduced to writing and shall be consistent with the Colorado Municipal Court Rules of Procedure and other applicable state laws. The Board of Trustees shall be required to approve any such Local Court Rules.
- 5-1-9 <u>Ex Officio Clerk.</u> The Judge shall also be Ex Officio Clerk of the court unless a separate Clerk of the Municipal Court shall have been appointed by the judge by and with the consent of the Board.
- 5-1-10 <u>Acting Municipal Judge</u>. In case of the temporary absence, sickness, or other inability of the Municipal Judge to act, the Board of Town Trustees may appoint some competent person to act as such Municipal Judge until the disability of the Municipal Judge is removed.
- Jurisdiction and Powers of Court. The Municipal Court shall have original exclusive jurisdiction of all cases arising under the Code, Ordinances and other laws of the Town, with full power to carry the same into effect and to punish violations thereof by the imposition of such fines and penalties as in such ordinances provided; it shall have power to compel attendance of witnesses and to punish for contempt of such court by fine, not to exceed three hundred dollars (\$300.00), or by jail sentence not to exceed ninety (90) days, and shall have all powers incident to a court of record in relation to same. The Municipal Judge may suspend the sentence or fine of any violator and place any violator on probation for a period not to exceed one (1) year.

- 5-1-12 Reports. The Municipal Judge shall file a monthly summary of activity in municipal court with the Town Clerk, which report may include general information regarding activity in the court, but not including specific information on individual defendants or of the disposition of specific cases.
- 5-1-13 Sessions of Court. There shall be regular sessions of court for the trial of cases and the Municipal Judge shall hear and determine complaints for the violation of any Town ordinances where there is probable cause to believe that an offense has been committed. It shall be lawful for said Municipal Judge to hold a special session of court at any time, if in the discretion of the Judge a special session is deemed advisable. The court shall be open during such hours as are set by the Municipal Judge with the consent and approval of the Board.
- 5-1-14 <u>Traffic Cases Separately</u>. Insofar as it is practicable, traffic cases shall be heard separately from other cases. Where traffic cases and other cases are set for the same court session, traffic cases shall be heard first.

#### ARTICLE 2 PROCEDURE

5-2-1	Rules of Procedure
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- 5-2-1 <u>Rules of Procedure</u>. Colorado Municipal Court Rules of Procedure (C.M.C.R.P.) shall apply in the Silverton Municipal Court except as amended by consistent Local Rules of Procedure as provided in section 5-1-8.
- 5-2-2 Commencement of Action. An action for the violation of any ordinance of the Town shall be brought in the name of the Town of Silverton on behalf of the people of the State of Colorado against the person who is alleged to have violated the ordinances as defendant, and shall be commenced by the filing of a complaint or by the issuance of a summons or complaint, or by both summons and a complaint as provided in Rule 204, C.M.C.R.P. Each act or series of related acts committed by the same person, constituting a violation of any of the provisions of this Code, shall be prosecuted by separate counts in a single prosecution.
- Witnesses. The Defendant and the Town of Silverton shall be entitled to compel the attendance of any witnesses, subject to the jurisdiction of the Municipal Court. Upon a written request, subject to the jurisdiction of the court, it shall cause to be served upon such witness a subpoena compelling his attendance at a given time in the Municipal Court for the purpose of giving testimony. All witnesses shall be entitled to a fee of five dollars (\$5.00) per day, and such witness fees shall be paid by the party requesting the attendance of the witness and taxed as costs of the suit. (C.R.S. 1973 §13-10-111).

#### 5-2-4 <u>Deliverance of Summons or Subpoena.</u>

(A) Any summons or subpoena issued in accordance with this chapter shall be served in any case by any police officer or in any particular case by any person specifically designated by the court for the purpose.

- (B) Any person who shall fail to appear in response to any summons or subpoena served on him shall be guilty of a violation of this chapter and upon conviction shall be fined in an amount of not more than three hundred dollar (\$300.00) or imprisoned for a period not exceeding ninety (90) days, or both such fine and imprisonment.
- Bond May Be Given. Every person arrested for a violation of the provisions of this Code shall have the right to be taken before a Municipal Court, or a Judge thereof, or a peace officer with jurisdiction in the Town of Silverton to be admitted to bail on his executing a cash surety or recognizance bond conditioned that he will appear on a day and hour therein mentioned, before the Municipal Court and not depart the court, which bond shall be in an amount adjudged sufficient by said Judge or officer to insure the appearance of the defendant. The bond shall be enforced and forfeited as provided in the C.M.C.R.P.
- 5-2-6 <u>Default</u>. When any defendant, duly summoned or admitted to bail, fails to appear at the time his case is made returnable or set for trial, the Municipal Judge may issue a warrant for the arrest of the defendant, which at the discretion of the judge may include a provision which allows the defendant to post a specified bond in the event the defendant is arrested to insure the appearance of the defendant, or the Municipal Judge may hear and examine the testimony offered on the part of the Town and may render judgment thereupon by default against the defendant, and in such amount under the provisions of this Code as the court may deem just.
- 5-2-7 Session Open to Public, Exceptions. All cases in Municipal Court shall be open to the public; provided, however, that where the type of offense charged and the nature of the case are such that it would be to the best interests of the witnesses and/or defendant to exclude all person not directly connected with the case; the Municipal Judge may order that the court be cleared of all persons not so directly connected with the case except qualified representatives of news agencies. This decision shall be solely in the discretion of the Municipal Judge.
- 5-2-8 Explanation of Defendant's Rights. At the beginning of each court session the Municipal Judge shall explain to defendants their rights in Municipal Court, as well as the order of trial, provided, however, that this may be done by pamphlet distributed to each defendant.
- 5-2-9 <u>Continuance</u>. A person who is duly summoned, who cannot be tried on account of the absence of witnesses or for any other good and sufficient cause, may request in open court a continuance of his case. The Municipal Judge may continue the matter upon terms set by him. Additional continuances may be granted upon application of the defendant or his attorney. However, in no case shall the total continuances exceed thirty (30) days, unless it appears to the Municipal Judge that extreme hardship will result. Where a person on appearance is on bond and a continuance is

requested, the Municipal Judge shall have the power to continue the bond for a period of the continuance. Nothing herein shall affect the right of the Town Attorney to request a continuance.

- Execution. Every person against whom any fine or penalty shall be assessed under the laws of the Town, who shall refuse or neglect to pay the same when demanded, may be committed in default thereof to the La Plata County Jail, or such other enclosure in which the Town is by contract entitled to house prisoners, under the direction of the proper officers, until the said fine and penalty is fully paid, or for such period of time as ordered by the Judge. Any such person may be required to do any reasonable work; provided however, that no single term of imprisonment shall exceed ninety (90) days. The Municipal Court shall discharge such person from further imprisonment for such fine when it shall be made satisfactorily to appear to the Judge that such person has no estate whatever wherewith to pay such fine.
- 5-2-11 Stay. In the discretion of the Municipal Judge a stay of execution may be granted to enable the defendant to pay the fine or penalty at a later time or in installments. In case the defendant shall not have met the terms of the stay of execution, then the execution shall issue and the defendant may be placed in jail until said judgement is satisfied.
- 5-2-12 <u>Sentence Suspended</u>. The Municipal Judge is hereby authorized to suspend the payment of any fine, or any part thereof, assessed for a violation of this Code or any ordinance, and he may suspend all or any part of any jail sentence imposed for such violation. He may impose reasonable conditions upon such suspension and revoke such suspension and reinstate the sentence for a violation of such conditions.

### ARTICLE 3 TRIAL BY JURY

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- Demand for Jury. In any action before the Municipal Court in which the defendant is entitled to a jury trial by the Constitution or the general laws of the sate, such party shall have jury upon request. A written jury request with the required twenty-five dollar (\$25.00) fee must be submitted to the court by the defendant within ten (10) days after arraignment or entry of a plea. The jury shall consist of three (3) jurors unless a greater number, not to exceed six (6), is requested by the defendant.
- 5-3-2 <u>Qualifications and Exemptions of Jurors.</u> Qualifications and exemptions of jurors shall be the same as provided by the Uniform Jury and Service Act (C.R.S. 1973, §13-71-101 *et seq.*)
- Method of Selecting Prospective Jurors. Upon the receipt of request for a jury trial and payment of the jury fee by a defendant, then the Municipal Judge shall appoint a Jury Commissioner to undertake to select prospective jurors as provided herein in a manner which is calculated to provide the defendant with a fair opportunity for obtaining a jury which consists of a representative cross section of the population of the municipality. The Jury Commissioner shall obtain the master jury list from the San Juan County Clerk and shall delete the names of persons who reside outside the boundaries of the Town from that list. That amended list shall be the master jury list for the Municipal Court. The Jury Commissioner shall summons twelve (12) prospective jurors in the event the defendant has requested a jury of three (3) and fifteen (15) prospective jurors in the event the defendant has requested a jury of six (6). The names of the prospective jurors shall be selected from the master list in a random manner which is designed to ensure equal probability of selection.
- 5-3-4 <u>Summoning Prospective Jurors</u>. Following the selection of prospective jurors, the Jury Commissioner shall issue a jury summons to each prospective juror, which shall be served by certified mail or by personal service by any police officer. The juror summons shall state the date of service, the hour at which they are to report, the

address of the municipal court room, a statement that the failure to obey the summons is a violation of the Code of the Town of Silverton, and such other information deemed appropriate by the Jury Commissioner.

- Juror Failing to Appear, Penalty. If any person summoned as a juror shall fail, neglect, or refuse to appear, without reasonable excuse, then the court shall have the power to issue a complaint to the juror requiring him to appear before such court to show cause why he should not be punished for contempt. At the time of the appearance of such juror on such complaint, it shall be lawful for the court to punish him for contempt or wholly discharge him if satisfactory excuse be made.
- 5-3-6 <u>Jury Fees.</u> Persons summoned to jury duty pursuant to this ordinance shall be entitled to a juror's fee of six dollars (\$6.00) per day or part of a day for which they are summoned, and actively engage on the jury, or three dollars (\$3.00) per day for attendance on the panel alone. (C.R.S. 1973, §13-33-101.)
- Waiver of Jury Fees. Whenever it shall be proved satisfactorily to the Municipal Judge, after all legal means have been exhausted, that any person who is charged with a violation of an ordinance and who requests a jury as herein provided, has no estate whatever wherewith to pay jury fees as provided in Section 5-3-1, it shall be the duty of the Municipal Judge to waive the requirement for advance payment, provided if the defendant is found guilty he shall be assessed the jury fees as part of the court costs.
- 5-3-8 <u>Trial Court</u>. If any defendant pleads guilty or waives his right to a jury trial or fails to demand a jury trial, the Municipal Judge shall hear the evidence and render a judgement thereon.
- 5-3-9 <u>Voir Dire, Challenges and Selection of Jury</u>. All aspects of the jury selection, including but not limited to Voir Dire, Challenge to the Array, Challenge for Cause and Peremptory Challenges shall be governed by the provisions of C.M.C.R.P.
- Instruction to Jury. At the conclusion of all of the evidence, and before arguments of counsel, the Judge shall read to the jury the ordinance or Code section alleged to have been violated by the defendant and shall orally instruct the jury as to any points of law that the Judge believes to be pertinent to the issues to be determined by the jury. The parties may submit written instructions to the Judge, and if he believes such instructions to be proper, he may read the same to the jury.
- 5-3-11 <u>Jury Verdict Sentence</u>. Upon a jury returning a verdict of guilty, the Judge shall record the same and shall proceed to fix or determine the punishment, penalty, or sentence, and to render judgement upon such verdict for the punishment, penalty, or sentence so determined by him; but if the jury returns a verdict of not guilty, the defendant shall be discharged.